

**PUBLIC HEALTH DEPARTMENT[641]**

**Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends the Notice of Intended Action to amend Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

The original Notice of Intended Action was published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7669B**. The Department was unable to hold the public hearing scheduled for April 28, 2009, due to an issue with the scheduling of the ICN. This amended Notice establishes a new public hearing on June 10, 2009, with 14 ICN locations.

The purpose of the proposed amendment is to be consistent with federal changes to the requirements of the WIC food package that become effective October 1, 2009, and that will affect 74,500 Iowa WIC participants. The amendment also reserves the Department's right to limit the number of foods for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, and change in appropriation of funds.

The Department has made the following changes to the proposed amendment that was published on April 8, 2009, as **ARC 7669B**. In paragraph "e," subparagraph (6), the word "frozen" was added, and the words "of nonrefrigerated juice" were removed. In paragraph "f," subparagraph (1), the words "low-fat, reduced fat" have been replaced with "1%" and the word "skim" has been added. In paragraph "i," the words "or AA" have been added. In paragraph "n," the word "canned" has been removed.

Any interested person may make written or oral suggestions or comments on the amendment on or before June 10, 2009. Comments should be directed to Julie McMahon, Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319-0075; telephone (515)281-3104; or fax (515)281-4913.

There will also be a public hearing on June 10, 2009, from 9 to 10 a.m. utilizing the Iowa Communications Network (ICN). The hearing will be conducted from 14 sites. Please call (515)281-4919 to schedule a time to speak at the hearing and to confirm the availability of the requested site. The hearing will originate from the Department of Public Health ICN Room, Sixth Floor, Lucas State Office Building, 321 East 12th, Des Moines, and will be accessible from the following ICN sites:

Iowa State University – 1 Lagomarcino Hall  
Corner of Knoll Road and Pamel Dr.  
Ames

Bettendorf Public Library  
Information Center – Kelinson Room  
2950 Learning Center Campus Drive  
Bettendorf

Cedar Falls Public Library  
524 Parkade  
Cedar Falls

Loess Hills AEA  
24997 Highway 92  
Council Bluffs

Keystone Area Education Agency – 1  
2310 Chaney Road  
Dubuque

Ft. Dodge Air National Guard  
1649 Nelson Avenue  
Ft. Dodge

Iowa Valley Community College  
123 6<sup>th</sup> Avenue West  
Grinnell

Hiawatha Public Library  
150 West Willman Street  
Hiawatha

North Iowa Area Community College – 1  
500 College Drive  
Mason City

Mount Pleasant Treatment Center  
1200 East Washington  
Mount Pleasant

Osceola Public Library  
300 S. Filmore Street  
Osceola

Great Prairie Area Education Agency – 1  
2814 N. Court Street  
Ottumwa

Northwest Area Education Agency – 12  
1520 Morningside Ave.  
Sioux City

This amendment is intended to implement Iowa Code section 135.11.

The following amendment is proposed.

Amend subrule 73.9(3) as follows:

**73.9(3)** *Criteria for approving products for inclusion in the WIC food package.*

- a. A product shall meet the federal regulations governing the WIC food package.
- b. Variety in the food package is encouraged to increase the likelihood of products being used ~~as well as~~ and to allow participants to exercise responsibility in shopping.
- c. Changes to the approved food list take effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration. The state reserves the right to change the food list more frequently if necessary.
- d. Cereals shall meet federal guidelines for ~~sugar and iron~~ content and shall also meet the following conditions:
  - (1) They ~~shall be~~ are carried by current Iowa WIC-approved vendors.
  - (2) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.
  - (3) If a group of cereals from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.
  - (4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa ~~WIC vendors~~ grocery retailers based on volume of total sales. Hot cereals are ranked in the same way. Multiple ~~varieties~~ container sizes of a single ~~brand of cereal variety~~ shall be considered as one ~~brand variety~~ for the purposes of constructing this ranking. The ~~state office department~~ compiles data from all distributors to develop an overall ranking or ranked list. The top 16 name brand cold cereals, the top 3 varieties of private label (store) brand cold cereals and the top 2 hot cereals that qualify are selected. At least half of the cereals authorized on the WIC-approved food list must have whole grain as the primary ingredient by weight and must meet labeling requirements for making a health claim as a whole grain food with moderate fat content. The department reserves the right to limit the number of approved cereals for administrative efficiency.
  - (5) Product ~~shall have~~ has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:  
(1) Juices ~~shall be~~ are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

(2) The brand ~~shall be~~ is carried by current Iowa WIC ~~vendors~~ grocery retailers based on volume of total sales. ~~The top two name brands of each flavor of juice (e.g., tomato, orange, grapefruit, grape, apple, or blended) and form of juice (single strength or concentrated) that meet the selection criteria will be approved. Any private-label (store) brands that meet the selection criteria will also be approved.~~ considered.

(3) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.

(4) If a group of juices from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.

(5) Product ~~shall have~~ has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.

(6) ~~Concentrated~~ Frozen fruit juices must be single flavors ~~of juice~~.

f. The following conditions apply to dairy products:

(1) To qualify, brands of whole, ~~low fat, reduced fat 1%, or fat-free~~ skim milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands ~~that significantly exceed the average price of other brands or which are marketed as providing additional health benefits~~ which have a retail value of 115 percent or higher than the state average for this product.

(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.

(3) All brands of natural cheese designated in the USDA WIC regulations qualify. The cheese shall have no added flavors (e.g., smoke flavoring, peppers, wine).

g. All brands of dried beans or peas are approved whether packaged or purchased in bulk; however, no mixes are allowed.

h. Any brand of peanut butter qualifies as long as it does not contain other ingredients such as jelly. Brands may be either refrigerated or nonrefrigerated.

i. Eggs shall be fresh, Grade A or AA large ~~or smaller~~ chicken eggs. ~~Specialty eggs, including those with health or nutrition claims and significantly higher prices,~~ Eggs which have a retail value of 115 percent or higher than the state average for this product shall not be approved.

j. Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked, ~~and is in six-ounce minimum size containers.~~ Tuna Fish packaged with other items such as crackers, or relish or other flavorings may not be purchased. Albacore tuna is not allowed.

k. Commercial infant formula shall meet the following conditions:

(1) It ~~shall have~~ is registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It ~~shall comply~~ complies with the calorie and iron content prescribed by the federal WIC regulations.

(3) It ~~has been~~ is approved by the USDA for use in the WIC program.

(4) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.

(5) All of the formula marketed under ~~that one~~ one label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.

~~(6) "Special formulas," as described in the regulations, must be approved by the USDA.~~

l. At least two whole grain options that meet federal guidelines will be provided.

m. Infant food fruits, vegetables and meats must meet the federal guidelines.

n. Fresh and frozen vegetables and fruits that meet federal guidelines will be available for purchase with cash value vouchers specifically for fruits and vegetables.

o. Soy beverages shall meet federal guidelines.

p. Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost and participant preference. The state reserves the right to limit the number of foods for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

~~q.~~ In addition to the criteria specified above, the department reserves the right to further restrict the number of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

r. The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or higher than the state average for that particular product.